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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10 *IN RE DREAMLAND BABY CO. WEIGHTED*
11 *SLEEP PRODUCTS LITIGATION,*

Master File No. 3:24-CV-02996-CRB

12 This Document Relates To:

**REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF PLAINTIFFS'
MOTION TO APPOINT INTERIM CLASS
COUNSEL**

13 All Actions

14 Judge: Hon. Charles R. Breyer

1 Plaintiffs Victoria Monsch, Megan Fehrenbach, Tuliisa Miller and Haley Muse (collectively,
 2 “Plaintiffs”) through their respective counsel, respectfully file this Reply Memorandum of Law in
 3 Further Support of Plaintiffs’ Motion to Appoint Interim Class Counsel (ECF No. 29), and in
 4 response to Defendant Dreamland Baby Co.’s (“Dreamland” or “Defendant”) Opposition to
 5 Plaintiffs’ Motion to Appoint Interim Class Counsel. ECF No. 35.

6 ARGUMENT

7 Plaintiffs have formed a well-qualified, experienced and cooperative Plaintiffs’ leadership
 8 team, consistent with the teachings of the Manual for Complex Litigation. *See* Manual for Complex
 9 Litigation (Fourth) (“MCL”) § 10.224 (2004). The leadership team is comprised of some of the most
 10 experienced and well-qualified class and mass action lawyers in the United States who coalesced
 11 organically and organized to begin the significant amount of work this case will require. Notably,
 12 in its Opposition, Dreamland does not challenge proposed interim counsel’s commitment of
 13 substantial time and resources to investigating the claims at issue, experience and expertise or
 14 willingness to provide the resources needed to prosecute this action. *See generally* ECF No. 35.
 15 Dreamland instead argues that Plaintiffs’ Motion to Appoint Interim Class Counsel should be denied
 16 because appointing interim counsel at this juncture would be unnecessary and premature. *See* ECF
 17 No. 35. Dreamland claims that appointing interim counsel is unnecessary because the litigation is
 18 consolidated and there is no “rivalry” among plaintiffs’ counsel vying to lead the cases. *See id.* at 2-
 19 5. Dreamland also posits that appointment of any interim class counsel should wait until after closure
 20 of the pleadings. *See id.* at 5.

21 None of Dreamland’s arguments are based in the text of Rule 23(g). *See* Fed. R. Civ. P.
 22 23(g). In fact, this Court has appointed interim class counsel in other consolidated consumer class
 23 action litigation at a substantially similar procedural posture. *See In re Intuit Free File Litig.*, No.
 24 19-cv-02546-CRB, ECF No. 72 (N.D. Cal. Aug. 19, 2019) (Breyer, J.). As here, the Court issued
 25 an order consolidating several class actions and instructing “attorneys who wished to be considered
 26 as interim class counsel pursuant to Federal Rule of Civil Procedure 23(g)(3) to submit applications
 27 for consideration.” *Id.* The Court then evaluated attorneys’ written submissions and oral argument,
 28 before selecting interim class counsel and setting a deadline for submission of a consolidated

1 complaint. *Id.*

2 Other courts have rejected the argument that appointment is unnecessary or premature. For
 3 example, in *Bernstein v. Cengage Learning, Inc.*, the defendant objected to appointment of interim
 4 class counsel, arguing that “because only one law firm represents Plaintiffs and there are no other
 5 pending related actions, [proposed interim counsel’s] appointment is unnecessary.” No.
 6 18CIV7877VECSLC, 2019 WL 6324276, at *2 (S.D.N.Y. Nov. 26, 2019). The court rejected this
 7 argument, noting in part:

8 While true that two similar recent actions against [defendant] are no longer pending,
 9 the recent existence of those other cases asserting similar claims with other
 10 plaintiffs represented by counsel other than [proposed interim counsel] shows that
 11 the possibility of more such cases is not foreclosed. Establishing interim lead
 12 counsel in this action will minimize the risk of duplicative filings and allow the
 Court to consolidate related filings more efficiently. [Defendant’s] alternative
 argument that appointing counsel is premature, is similarly unpersuasive in light of
 the Court’s analysis of the four Rule 23(g)(1)(A) factors set forth above.

13 *Id.* (internal citations omitted); *see also Delaney v. Sensa Prod., LLC*, No. 14-CV-2120 JLS
 14 (WVG), 2015 WL 13828624, at *3 (S.D. Cal. Apr. 13, 2015) (rejecting argument that appointing
 15 interim class counsel under Rule 23(g) would be premature, reasoning that “appointing interim
 16 class counsel at this stage in the proceedings will eliminate duplicative work going forward in the
 17 interests of judicial efficiency.”). Plaintiffs respectfully request that the Court follow suit and reject
 18 Dreamland’s argument that appointing interim counsel to lead this consolidated litigation would
 19 be improper.

20 Dreamland’s “rivalry” requirement should be disposed of just the same. This Court has also
 21 appointed interim class counsel in consolidated class action litigation upon submission of an
 22 uncontested motion seeking such appointment. *See Ctr. for Indep. Living, Inc. et al v. Wal-Mart*
 23 *Stores, Inc.*, No. 12-cv-03885, ECF Nos. 21, 27 (N.D. Cal. Apr. 3, 2013) (Breyer, J.). In *Center for*
 24 *Independent Living*, plaintiffs moved for the consolidation of two class actions and the appointment
 25 of counsel from one of those cases to lead the consolidated litigation. *Id.* at ECF No. 21. Like in this
 26 case, plaintiffs’ counsel from the other class action did not oppose the moving attorneys’
 27 appointment as interim class counsel. *See id.* at 2. This Court granted the uncontested motion and,
 28 contrary to Dreamland’s suggested “rivalry” requirement, appointed interim class counsel pursuant

1 to Rule 23(g). *Id.* at ECF No. 27.

2 Other courts in this District, and elsewhere throughout the country, have likewise appointed
 3 interim counsel where a motion seeking appointment as interim counsel was not contested. *See, e.g.,*
 4 *In re Axa Wage & Hour Litig.*, No. C 06-04291 JSW, 2007 WL 4145116 (N.D. Cal. Nov. 19, 2007).
 5 This is not surprising, as the most common and desirable means of selecting class counsel is “private
 6 ordering” where “[t]he lawyers agree who should be lead class counsel and the court approves the
 7 selection after a review to ensure that the counsel selected is adequate to represent the class
 8 interests.” *See* MCL § 21.272 at 279 (2004). Efforts of plaintiffs’ counsel to coordinate their
 9 activities among themselves are to be encouraged. MCL, § 10.22 at 24. Therefore, Plaintiffs
 10 respectfully request that the Court reject any purported “rivalry” requirement and, in its discretion,
 11 grant Plaintiffs’ Motion to Appoint Interim Class Counsel and appoint Zachary Arbitman of
 12 Feldman Shepherd Wohlgerlenter Tanner Weinstock & Dodig, LLP and Melissa S. Weiner of
 13 Pearson Warshaw, LLP as Interim Co-Lead Class Counsel and Rachel Soffin of Milberg Coleman
 14 Bryson Phillips Grossman and Benjamin Heikali of Treehouse Law, LLP to the Plaintiffs’ Executive
 15 Committee pursuant to Rule 23(g).

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17
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19 DATED: August 12, 2024

Respectfully Submitted,

20 /s/ Zachary Arbitman

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